

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

UNITED STATES OF AMERICA,	)	CASE NO.: 1:17 MJ 9011
	)	
Plaintiff,	)	CHIEF JUDGE SOLOMON OLIVER, JR.
	)	MAGISTRATE JUDGE
	)	WILLIAM H. BAUGHMAN, JR.
v.	)	
	)	<u>GOVERNMENT'S MOTION TO</u>
PHILLIP R. DURACHINSKY,	)	<u>EXTEND TIME FOR RETURNING</u>
	)	<u>INDICTMENT</u>
Defendant.	)	

The United States of America, by and through its counsel, David A. Sierleja, Attorney for the United States, Acting Under Authority Conferred by 28 U.S.C. § 515, and Daniel J. Riedl, Assistant U.S. Attorney, respectfully moves this Court to extend the time for filing an information or indictment until January 10, 2018, per Order granted on October 18, 2017, for the reasons set forth in the attached Memorandum.

Respectfully submitted,

DAVID A. SIERLEJA  
Attorney for the United States, Acting Under  
Authority Conferred by 28 U.S.C. § 515

By: /s/ Daniel J. Riedl  
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## MEMORANDUM

A.

On January 24, 2017, a criminal complaint (Case No. 1: 17 MJ 9011) was filed against defendant, Phillip R. Durachinsky, charging the defendant with a violation of federal law, that is intentionally causing damage without authorization, to ten or more protected computers. The defendant appeared before United States Magistrate Judge William H. Baughman on January 25, 2017, after having been arrested pursuant to the complaint. At the time of the initial appearance, Defendant waived his probable cause and detention hearing, was remanded to the custody of the U.S. Marshal's Service, and the matter was bound over to the grand jury. On January 26, 2017, the Government filed a Motion for Extension of Time to Indict. (R.6: Motion; PageID 16). The motion included a signed waiver by the Defendant in which he waived his time to indict up to and including March 26, 2017. (R.6-1: Waiver; PageID 21). The motion was granted on January 27, 2017. (R.8: Order; Page ID 25). On March 23, 2017, the Government filed a second Motion for Extension of Time to Indict. (R.12: Motion; PageID 31). The motion included a signed waiver by the Defendant in which he waived his time to indict up to and including May 25, 2017. (R.12-1: Waiver; PageID 36). On May 12, 2017, the Government filed a third Motion for Extension of Time to Indict. (R.15: Motion; PageID 41). The motion included a signed waiver by the Defendant in which he waived his time to indict up to and including July 24, 2017. (R.15-1: Waiver; PageID 46). The motion was granted on May 17, 2017. (R.16: Order; Page ID 47). On July 20, 2017, the Government filed a fourth Motion for Extension of Time to Indict. (R.22: Motion; PageID 61). The motion included a signed waiver by the Defendant in which he waived his time to indict up to and including July 24, 2017. (R.22-1: Waiver; PageID 66). The motion was granted on July 21, 2017. (R.23: Order; Page ID 67).

On October 16, 2017, the Government filed a fifth Motion for Extension of Time to Indict. (R.25: Motion; PageID 69). The motion included a signed waiver by the Defendant in which he waived his time to indict up to and including November 21, 2017. (R.25-1: Waiver; PageID 74). The motion was granted on October 18, 2017. (R.27: Order; Page ID 81).

B.

Title 18, Section 3161 of the United States Code provides that an “information or indictment charging an individual with the commission of an offense shall be filed within thirty days from the date on which such individual was arrested or served with a summons in connection with such charges.” 18 U.S.C. § 3161(b). In the instant prosecution, the previously granted extension allows the government to file an indictment or information on or before November 21, 2017.

The government submits that a limited extension of the time for filing an information or indictment will serve the ends of justice by affording the parties additional time to review the information gathered in this investigation and permit meaningful discussions regarding the resolution of this matter. As of the date of this filing, the government has imaged the computers (the primary evidence in this case) seized from Defendant as well as vaults stored on other computers controlled by Defendant. The computers, external hard drive and vaults seized by the government from defendant contain in excess of twenty million files. The sheer magnitude of the undertaking of the computer forensic searches necessitates additional time for the government to conduct a thorough search and time for the defense to assess the evidence to determine whether a plea to an Information may be in Defendant’s best interest. The government is also in the process of notifying victims. Given that there are thousands of potential victims in this case, identifying and notifying the victims is a complex and time

consuming process. It is anticipated that the parties will use the proposed extension of time to ascertain as many of the relevant facts as possible, which if accomplished, will serve the interests of justice by potentially rendering grand jury presentation and/or a trial more complete or unnecessary. See United States v. Fields, 39 F.3d 439, 445-46 (3d Cir. 1994) (approving “ends of justice” continuance to allow negotiations to continue). See also United States v. Lewis, 980 F.2d 555 (9th Cir. 1992). If grand jury presentment proves necessary, the proposed extension of time will serve the ends of justice and promote efficiency by allowing the grand jury panel to consider a full panoply of potential charges and will allow for the streamlined presentation of evidence offered in support of those charges.

Undersigned government counsel has spoken with Ronald Frey, counsel for defendant, concerning this matter, and is advised that the defense has no objection to the proposed continuance. The defendant and Mr. Frey have executed a Speedy Trial waiver which is attached for the court’s consideration.

For all of the foregoing reasons, the government, pursuant to 18 U.S.C. § 3161(h)(7)(A), respectfully moves this Court to extend the time for filing an information or indictment from November 21, 2017, until January 10, 2018, and to enter a finding under that section that the

ends of justice are served by taking such action, and that this continuance outweighs the best interest of the public and the defendant in a speedy trial.

Respectfully submitted,

DAVID A. SIERLEJA  
Attorney for the United States, Acting Under  
Authority Conferred by 28 U.S.C. § 515

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CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of October 2017, a copy of the foregoing document was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. All other parties will be served by regular U.S. Mail. Parties may access this filing through the Court's system.

/s/ Daniel J. Riedl

Daniel J. Riedl

Assistant U.S. Attorney